

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AUSTIN CARTER, NICOLE M.
CARTER, TRESSA CARTER, and FELICITY
BUHL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PAULINE CARTER,

Respondent-Appellant,

and

TIMOTHY CARTER, JAMES MICHAEL, and
CHARLES BUHL,

Respondents.

UNPUBLISHED

February 8, 2005

No. 255231

Sanilac Circuit Court

Family Division

LC No. 02-034197-NA

Before: Wilder, P.J., and Sawyer and White, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(ii), (g), and (j). We affirm.

Respondent-appellant first argues that the trial court clearly erred in terminating her parental rights. Termination of parental rights is mandatory if the trial court finds that the petitioner established a statutory ground for termination, unless the court finds that termination is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 344; 612 NW2d 407 (2000). Here, the trial court found that new grounds for termination existed where respondent-appellant's psychological evaluation showed that she had significant problems with parenting due to her immaturity and self-centeredness, that she responded to problems by projecting blame on others, and that she was unwilling to accept appropriate responsibility for herself and her actions. There was considerable evidence that respondent-appellant acted as predicted by the psychological evaluation. Respondent-appellant had notice of these conditions, had a reasonable opportunity to correct them, and did not. Further, there was ample evidence that respondent-appellant could not rectify these conditions within a reasonable time. Several service providers testified that respondent-appellant took no initiative to correct any problem on her own. She lived in squalor

and filth for many months, and delayed contacting a plumber and an exterminator after petitioner had approved payment for these services. The trial court did not clearly err in finding that petitioner established section (c)(ii) by clear and convincing evidence.

The trial court also did not clearly err in finding that sections (g) and (j) were established by clear and convincing evidence. The trial court used the facts described above to find that respondent-appellant did not provide proper care and custody to her children, that there was no reasonable likelihood that she could provide proper care and custody within a reasonable time, and that there was a reasonable likelihood that the children would be harmed if returned to her. Further, the trial court did not clearly err in its best interests determination.

Next, respondent-appellant argues that the trial court erred in failing to deny petitioner's motion to disqualify her counsel. The trial court did not rule on petitioner's motion to disqualify respondent-appellant's counsel. Rather, respondent-appellant's counsel requested to withdraw and the motion was granted. The issue is, therefore, unpreserved. Although this Court may overlook preservation requirements where failure to consider the issue would result in manifest injustice, no manifest injustice occurred here where new counsel was appointed within days of the withdrawal, new counsel received a three month adjournment of the termination hearing, and new counsel provided a vigorous defense to respondent-appellant. *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

Finally, respondent-appellant argues that the trial court erred in denying her motion to disqualify the guardian ad litem based on her concurrent position as a member of the county FIA board. We disagree. A court's finding regarding a conflict of interest is a question of fact reviewed for clear error. *Camden v Kaufman*, 240 Mich App 389, 399; 613 NW2d 335 (2000). Further, even a plain error regarding a conflict of interest does not require reversal unless actual prejudice is proven. *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 603; 603 NW2d 824 (1999).

Michigan Rule of Professional Conduct (MRPC) 1.7(b) provides, in relevant part, that "[a] lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to . . . a third person." As Ms. Sawyer's responsibilities to the FIA board were substantially unrelated to this litigation, it did not seem likely that a conflict would eventuate. Further, Ms. Sawyer's action in disagreeing with petitioner and filing a petition to terminate parental rights more than two months before petitioner filed its petition, reflected her duty of loyalty to the minor children and not some alleged possible consequences to her position on the FIA board. Therefore, the trial court did not clearly err in denying respondent-appellant's motion to disqualify the guardian ad litem. Finally, there was no demonstration of any prejudice to respondent-appellant based on any alleged conflict of interest. *Osborne, supra* at 603.

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Helene N. White